

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #11	CCRB Case #: 201603587	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/29/2016 11:45 AM	Location of Incident: [REDACTED]	Precinct: 42	18 Mo. SOL 9/29/2017	EO SOL 9/29/2017	
Date/Time CV Reported Mon, 04/25/2016 9:35 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 04/25/2016 9:35 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Juan Candelario	06688	[REDACTED]	PSA 7
2. SGT Jason Korpilinski	1591	[REDACTED]	PSA 7
3. POM Ryan Gargan	20948	[REDACTED]	PSA 7
4. POM Yahkeem Allah	11719	[REDACTED]	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Pando	17640	[REDACTED]	PSA 7
2. SGT Karolina Wierzchowska	3476	[REDACTED]	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM Juan Candelario	Abuse: At [REDACTED] in the Bronx, Police Officer Juan Candelario stopped [REDACTED]	[REDACTED]
B.POM Ryan Gargan	Abuse: At [REDACTED] in the Bronx, Police Officer Ryan Gargan stopped [REDACTED]	[REDACTED]
C.POM Juan Candelario	Abuse: At [REDACTED] in the Bronx, Police Officer Juan Candelario searched [REDACTED] property.	[REDACTED]
D.POM Ryan Gargan	Abuse: At [REDACTED] in the Bronx, Police Officer Ryan Gargan searched [REDACTED]	[REDACTED]
E.POM Juan Candelario	Abuse: At [REDACTED] in the Bronx, Police Officer Juan Candelario searched [REDACTED]	[REDACTED]
F.POM Juan Candelario	Abuse: At [REDACTED] in the Bronx, Police Officer Juan Candelario frisked [REDACTED]	[REDACTED]
G.SGT Jason Korpilinski	Abuse: At [REDACTED] in the Bronx, Sergeant Jason Korpilinski arrested [REDACTED]	[REDACTED]
H.POM Juan Candelario	Abuse: At the PSA 7 stationhouse, Police Officer Juan Candelario strip-searched [REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

Case Summary

On April 25, 2016, [REDACTED] [REDACTED] called the Civilian Complaint Review Board (CCRB) and filed this complaint via the CCRB call processing system. [REDACTED] [REDACTED] also called the IAB Command Center to file this complaint. There is no video footage of this incident.

On March 29, 2016, at approximately 11:45 a.m., [REDACTED] [REDACTED] was walking in the vicinity of [REDACTED] [REDACTED] in the Bronx. [REDACTED] [REDACTED] testified that after purchasing a tea from a corner store, he was walking towards a restaurant where he intended to eat, holding his cup of tea in his hand. [REDACTED] [REDACTED] indicated that he had not purchased or sold any illicit item.

As [REDACTED] [REDACTED] walked, he alleged that two members of the Public Service Area (PSA) 7 Conditions team, PO Juan Candelario and PO Ryan Gargan, stopped him (**Allegations A and B**). [REDACTED] [REDACTED] alleged that PO Candelario took the tea container out of his hand, opened it, and looked inside it (**Allegation C**). [REDACTED] [REDACTED] alleged that PO Gargan and PO Candelario simultaneously reached inside the sleeves of his long sleeve shirt (**Allegations D and E**). [REDACTED] [REDACTED] alleged that PO Candelario felt around his waistband and patted the outside of his back pants pocket (**Allegation F**), before removing his wallet from this pocket (subsumed in **Allegation E**).

[REDACTED] [REDACTED] was arrested under the supervision of Sgt. Jason Korpolski (**Allegation G**). Two other members of the PSA 7 Conditions team, PO Michael Pando and PO Yahkeem Allah, reportedly communicated to Sgt. Korpolski that [REDACTED] [REDACTED] had engaged in what appeared to be a hand-to-hand drug transaction. [REDACTED] [REDACTED] was transported to the PSA 7 stationhouse. [REDACTED] [REDACTED] alleged that inside a private holding cell, PO Candelario ordered him to pull down his pants and underwear, and to squat and cough (**Allegation H**). Sgt. Korpolski, PO Candelario, PO Gargan, and PO Allah each failed to prepare a memo book entry regarding this incident (**Allegations I through L**).

[REDACTED] [REDACTED] sole arrest charge was for criminal sale of a controlled substance in the fifth degree, but the arrest was ultimately voided prior to an arraignment (Board Review 01).

This case was delayed due to the fact that documents requested from PSA 7 were approximately one month overdue.

§ 87(2)(b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
- PO Candelario has been a member-of-service for six years, and this is the first CCRB complaint filed against him.
- PO Gargan has been a member-of-service for five years, and he has been the subject of one previous physical force allegation, which was truncated, and one discourtesy allegation, which was withdrawn.
- Sgt. Korpinski has been a member-of-service for 10 years, and he has been the subject of 10 previous CCRB allegations, none of which were substantiated or contain a pattern relevant to this case, although in CCRB case number 201101054, Sgt. Korpinski was cited for failing to prepare a memo book entry.
- PO Allah has been a member-of-service for six years, and he has been the subject of 10 previous CCRB allegations, two of which were substantiated, and one of which he was cited for other misconduct.
 - In CCRB case number 201207175, the CCRB substantiated a ‘stop’ and a ‘frisk’ allegation, recommending charges for both, and the NYPD issued him instructions. The CCRB also cited PO Allah for failing to prepare a memo book entry.

Findings and Recommendations

Explanation of Subject Officer Identification

■■■■■ (Board Review 05) alleged that PO Candelario and PO Gargan stopped him while he was walking in the vicinity of ■■■■■ in the Bronx. This was corroborated by PO Candelario (Board Review 06) and PO Gargan (Board Review 07). PO Gargan testified that no one instructed PO Candelario and him to stop ■■■■■ and that it was their joint decision to stop him.

Sgt. Korpinski testified that he and PO Candelario stopped ■■■■■. However, given that ■■■■■ PO Gargan, and PO Candelario were in agreement that it was PO Candelario and PO Gargan who stopped ■■■■■ the investigation determined by a preponderance of the evidence that Officers Candelario and Gargan stopped ■■■■■ not Sgt. Korpinski. Allegations A and B are therefore pleaded against PO Candelario and PO Gargan.

Allegation A – Abuse of Authority: At ■■■■■ in the Bronx, Police Officer Juan Candelario stopped ■■■■■

Allegation B – Abuse of Authority: At ■■■■■ in the Bronx, Police Officer Ryan Gargan stopped ■■■■■

It is undisputed that either PO Allah or PO Pando communicated to their fellow members of the PSA 7 Conditions team—PO Candelario, PO Gargan, and Sgt. Korpinski—that they observed ■■■■■ engaging in what appeared to be a hand-to-hand drug transaction. It is further undisputed that acting on this information, ■■■■■ was stopped while solely walking outside of ■■■■■ in the Bronx. As discussed in the ‘Explanation of Subject Officer Identification’ section, the investigation determined that PO Candelario and PO Gargan stopped ■■■■■

The specific instructions communicated by either PO Allah or PO Pando in regards to ■■■■■ remain disputed. PO Gargan testified that there were no instructions provided in the

communication, PO Candelario testified that the communication indicated to “stop and check” [REDACTED] PO Pando testified that he did not recall, and Sgt. Kopolinski and PO Allah testified that the communication indicated for [REDACTED] to be arrested.

There were negative results for an Event related to this incident (Board Review 19), and each officer interviewed indicated that the communication was relayed either by cell phone or tactical radio channel, which is typically unrecorded.

[REDACTED] testified that he was solely walking towards a restaurant after having purchased a cup of tea from a corner store.

§ 87(2)(g)

Allegation C – Abuse of Authority: At [REDACTED] in the Bronx, Police Officer Juan Candelario searched [REDACTED] property.

PO Candelario testified that as [REDACTED] was walking in the vicinity of [REDACTED] in the Bronx, he saw [REDACTED] appear to place a small object inside a cup of tea, but that he could not make out what the small object was. PO Gargan testified that he never thought [REDACTED] placed anything inside his cup.

As [REDACTED] alleged, PO Candelario testified that he took the cup of tea from him, opened the lid, and looked inside it. No illicit item was discovered inside the cup of tea. Both PO Candelario and PO Gargan indicated that [REDACTED] was not under arrest at the point when PO Candelario looked inside [REDACTED] cup.

A search of an individual must be incident to an actual arrest, not just to probable cause that might lead to an arrest. People v. Reid, 24 N.Y.3d 615 (2014) (Board Review 08).

§ 87(2)(g)

Allegation D – Abuse of Authority: At [REDACTED] in the Bronx, Police Officer Ryan Gargan searched [REDACTED]

Allegation E – Abuse of Authority: At [REDACTED] in the Bronx, Police Officer Juan Candelario searched [REDACTED]

[REDACTED] alleged that after PO Gargan and PO Candelario approached him, PO Gargan reached inside one of the sleeves of his long sleeve shirt while PO Candelario reached inside the other sleeve. [REDACTED] further alleged that PO Candelario removed his wallet from his back pants pocket.

PO Candelario denied looking or reaching inside of [REDACTED] sleeves, denied searching [REDACTED] person in any capacity, and he denied seeing PO Gargan do either of

these things. PO Gargan testified that he did not recall searching [REDACTED] person or looking inside of his sleeve, and he testified that he did not recall seeing PO Candelario do either of these things.

§ 87(2)(g)

Allegation F – Abuse of Authority: At [REDACTED] in the Bronx, Police Officer Juan Candelario frisked [REDACTED].

[REDACTED] alleged that PO Candelario felt around his waistband area and his feet, and tapped the outside of his back pants pocket. PO Candelario acknowledged patting the outside of [REDACTED] pockets, legs, and upper body.

PO Candelario testified that there was no specific indication that [REDACTED] possessed a weapon, and indicated that whenever he stops anyone, he does a pat-down to ensure that the person does not have a weapon. PO Candelario also testified that [REDACTED] was not under arrest when he frisked him.

In order to frisk an individual, an officer must harbor reasonable suspicion that the individual is in possession of a weapon. People v. DeBour, 40 N.Y.2d 210 (1976) (Board Review 09).

§ 87(2)(g)

Allegation G – Abuse of Authority: At [REDACTED] in the Bronx, Sergeant Jason Korpolski arrested [REDACTED].

It is undisputed that Sgt. Korpolski (Board Review 10) did not personally observe [REDACTED] do anything aside from walking in the vicinity of [REDACTED] in the Bronx, prior to placing [REDACTED] under arrest. It is further undisputed that [REDACTED] arrest was solely based on a communication from either PO Pando or PO Allah.

Sgt. Korpolski testified that he received a communication from one of his subordinates—he believed it was PO Pando, but he was not certain—that [REDACTED] had engaged in a hand-to-hand drug transaction outside of [REDACTED]. Sgt. Korpolski initially testified that no other information was provided to him, but later said that the communication indicated that [REDACTED] was believed to have been the seller in the drug transaction. Sgt. Korpolski testified that the direct area of [REDACTED] is a “chronic” narcotics location.

PO Pando (Board Review 11), who was [REDACTED] arresting officer, testified that he did not recall the incident, nor did he recall seeing an individual engage in an apparent drug transaction. [REDACTED] arrest report, which was prepared by PO Pando, indicates that [REDACTED] was observed in “what appeared to be a drug transaction.”

PO Allah (Board Review 12) testified that he was with PO Pando during the time of the incident, and that he observed [REDACTED] engage in a hand-to-hand transaction. PO Allah testified that he was on the opposite side of the street from [REDACTED] at the other end of the

block, and he observed [REDACTED] through a pair of binoculars while sitting inside of an unmarked police vehicle. PO Allah indicated that he observed [REDACTED] stand outside a corner store for a couple of minutes, at which point, an unidentified male individual approached him and exchanged U.S. currency for “small objects,” although he could not tell what the small objects were, the quantity, or the color. PO Allah stated that he never saw drugs on either [REDACTED] or the unidentified male individual. After the unidentified male individual gave [REDACTED] U.S. currency in exchange for the “small objects,” [REDACTED] walked in one direction, and the unidentified male individual walked in the other direction.

PO Allah testified that after making these observations, either he or PO Pando—he did not recall who—communicated to the other members of the Conditions team to arrest [REDACTED] and the unidentified male individual.

PO Gargan indicated that [REDACTED] description was communicated, but that no instruction was provided. PO Candelario testified that the communication indicated that [REDACTED] was observed to have “possibly” engaged in a drug transaction, and to stop and “check” him. Sgt. Korpolski testified that the communication indicated that [REDACTED] had engaged in a drug transaction.

Sgt. Korpolski arrested [REDACTED] and his sole charge was for criminal sale of a controlled substance in the fifth degree, but [REDACTED] arrest was ultimately voided prior to an arraignment. Two arrests in addition to [REDACTED] were made on the same day, at the same location, both related to narcotics (Board Review 14).

[REDACTED] arrest report indicates that he was observed engaging in “what appeared to be a drug transaction.” It does not mention an observation of a drug-like substance, packaging, or material.

§ 87(2)(g)

Three factors are relevant in determining whether probable cause exists in the case of a police officer’s observation of what he believes to be street-level drug dealing: (1) a “tell-tale” sign of illicit drug activity; (2) a high incidence of drug trafficking in the particular area; (3) the training and experience of the observing officer. People v. McRay, 51 N.Y.2d 594 (1980) (Board Review 13). The observing officer in this case, where the court found that the circumstances gave rise to probable cause, was a 20-year veteran narcotics detective.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation H – Abuse of Authority: At the PSA 7 stationhouse, Police Officer Juan Candelario strip-searched [REDACTED].

[REDACTED] testified that he was transported to the PSA 7 stationhouse along with another civilian, identified by the investigation as ##### [REDACTED]. [REDACTED] alleged that after arriving at the stationhouse, he was brought to a private holding cell where PO Candelario ordered him to pull down his pants and underwear, and to squat and cough. [REDACTED] testified that he complied with PO Candelario's orders.

It is undisputed that approximately 30 minutes after arriving at the stationhouse, [REDACTED] arrest was voided, and he was released. [REDACTED] arrest report indicates that "upon further investigation, no contraband was recovered, and [REDACTED] was released."

[REDACTED] (Board Review 15) indicated that he believed that [REDACTED] was "checked" in a private holding cell, and when no contraband was discovered, he was released. However, [REDACTED] indicated that he did not see [REDACTED] getting "checked," nor could he hear anything being said to [REDACTED] while he was inside the holding cell.

PO Candelario testified that he did not remember seeing [REDACTED] at the stationhouse, and he denied strip-searching him. PO Pando, PO Gargan, PO Allah, and the desk sergeant—Sgt. Karolina Wierzchowska of PSA 7 (Board Review 16)—each indicated that they did not know whether [REDACTED] was strip-searched.

Sgt. Korpolski testified that he and one to two other officers—he did not recall who—escorted [REDACTED] to a private holding cell, at which point [REDACTED] on his own volition, began removing his pants, saying, "You can check me, I've got nothing on me." This was not corroborated by any other officer interviewed. Sgt. Korpolski testified that he ordered [REDACTED] to put his clothing back on, and he denied that he or any officer ever ordered [REDACTED] to remove his clothing or otherwise strip-searched him.

Sgt. Korpolski indicated that it was his decision to void [REDACTED] arrest, for the sole reason that there was insufficient evidence—the alleged "buyer" was not apprehended and no drugs were recovered from [REDACTED]. Sgt. Korpolski testified that he knew these things before [REDACTED] was placed in a holding cell. When asked why [REDACTED] was placed in a holding cell if these things were known to Sgt. Korpolski beforehand, Sgt. Korpolski replied, "I believed he still might have something on him," and added that they were not finished with their investigation. When asked what, if anything, else was done to investigate [REDACTED], Sgt. Korpolski first responded, "I don't know," and later stated that the vehicle in which [REDACTED] had been transported was searched for contraband and that this search yielded negative results.

§ 87(2)(g)

§ 87(2)(g) [REDACTED]

[illegible]

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
 Title/Signature Print Date

Reviewer: _____

Title/Signature Print Date